

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN MARK NOENNIG**, on January 30, 2001 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Mark Noennig, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Jeff Mangan, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. John Esp (R)
Rep. Dennis Himmelberger (R)
Rep. Hal Jacobson (D)
Rep. Rick Laible (R)
Rep. Jesse Laslovich (D)
Rep. Bob Lawson (R)
Rep. Michelle Lee (D)
Rep. Ken Peterson (R)
Rep. William Price (R)

Members Excused: Rep. Brad Newman (D)
Rep. James Whitaker (R)
Rep. Cindy Younkin (R)

Members Absent: None.

Staff Present: Eddye McClure, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 210, 1/27/01
HB 298, 1/27/01
Executive Action: HB 179; HB 210; HB 298; HB 257

HEARING ON HB 298

Sponsor: Representative Tom Facey, HD 67, Missoula

Proponents: Mike Kadas, Mayor of Missoula
Alec Hansen, MLCT
Byron Roberts, Mt. Building Association
Joe Mazurek, Helena Attorney
Janie McCall, City of Billings

Opponents: none

Informational Witnesses: Eric Felig

Opening Statement by Sponsor: Rep Tom Facey, HD 67, Missoula.
Introduced HB 298 dealing with building codes. This is a complex and highly controversial issue.

Proponents' Testimony: Mike Kadas, Mayor of Missoula. This bill would allow our city council to control the city building codes. This authority needs to be returned to local government. *{Tape : 1; Side : A; Approx. Time Counter : 0 - 3.4}*

Alex Hanson, League of Cities and Towns. Our association worked on the drafting of this bill and give it our full support. *{Tape : 1; Side : A; Approx. Time Counter : 3.4 - 4.2}*

Opponents' Testimony: None

Questions from Committee Members and Responses: Tape recorder did not work.

Closing by Sponsor:

HEARING ON HB 210

Sponsor: Rep Rick Ripley, HD 50, Wolf Creek

Proponents: Mike Murphy, Mt. Water Res. Assoc.
Jim Foster, Manager Helena Valley Irrigation

Opponents: None

Opening Statement by Sponsor:

Proponents' Testimony:

Opponents' Testimony:

Questions from Committee Members and Responses:

Closing by Sponsor:

EXECUTIVE ACTION ON HB 210

Motion/Vote: REP. YOUNKIN moved that HB 210 DO PASS AS AMENDED.
Motion carried 18-0.

EXECUTIVE ACTION ON HB 257

Motion: REP. YOUNKIN moved that HB 257 DO PASS.

Discussion:

REP. JACOBSON moved an amendment on HB 257 DO PASS. The amendment was worked on with the Lewis and Clark County Auditor, who expressed concern about having to pay legal costs in the event that she would appeal a claim.

REP. YOUNKIN said in the event of litigation, the county would be obligated to pay the county auditor's attorney fees. The county attorney would not be able to represent the county auditor because there is a clear conflict of interest. She doesn't want to create a situation which would foster frivolous law suits and worries that it may foster the ability for a county auditor to appeal everything from the district court.

REP. ANDERSEN asked how many counties have a county auditor. CHAIRMAN NOENNIG replied 10 counties.

CHAIRMAN NOENNIG asked if this amendment intended to include an attorney's fee. REP. JACOBSON replied yes. CHAIRMAN NOENNIG said that he suggests entering that into the amendment. REP. JACOBSON moved that HB 257 BE AMENDED with the words "attorney fees."

CHAIRMAN NOENNIG said he is concerned with the arguments occurring between the auditors and county commissioners over what the county commissioners thought was appropriate behavior on the use of credit

cards and so forth, and what the auditor thought was inappropriate. He would suggest that attorney's fees not be automatically paid.

REP. YOUNKIN said the problem in this can be a one-sided thing. There is a statute that prohibits one-way occurring fees; there has to be a prevailing party. She doesn't want to get into the situation where the auditor would have to pay out of the auditor's own pocket. She thinks currently the county would have to pay the auditor's attorney fees without this amendment, and is afraid we are muddying the water with this amendment.

CHAIRMAN NOENNIG said the reciprocal attorney fees only apply to contracts.

REP. YOUNKIN said the Committee should not create a situation where if the auditor appeals and is unsuccessful, the auditor has to pay the county's attorney fee. If what was said is correct, insertion of the word "successful" before "appeal" would be a good way of amending the bill.

CHAIRMAN NOENNIG said he would rather see a middle ground, which suggests saying "in the counties responsible for paying all costs and attorney fees associated by the appeal from the auditor if the appeal is substantially justified, whether or not it is successful." **Chairman Noennig** moved to amend the amendment.

Motion/Vote: **REP. NOENNIG** moved that **HB 257 BE AMENDED. Motion carried 18-0.**

REP. BITNEY asked if this bill is a big problem or what kind of dispute occurred to cause this piece of legislation. **Rep. Younkin** said it is not a big problem but has been an issue in the past. It happens on occasion; the reason she carried this is because it is the county commissioners that set the policies and determine the budget to decide how money is going to be spent. The auditor's job is to keep the books and make sure that the claims that come in from various department are within the budget. **REP. BITNEY** asked if there is a strong need for this bill, since there are irregular occurrences.

Motion/Vote: **REP. NOENNIG** moved that **HB 257 DO PASS AS AMENDED. Motion carried 18-0.**

ADJOURNMENT

Adjournment: 5:00 P.M.

REP. MARK NOENNIG, Chairman

PATI O'REILLY, Secretary

MN/PO

EXHIBIT (loh24aad)